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of all Forms of
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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Forty-first session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Seventh periodic reports of States parties due in 1992

Addendum

# REPUBLIC OF KOREA*

[20 March 1992]

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* For the fifth and sixth periodic reports of the Government of the Republic of Korea and the summary records of the meetings of the Committee at which those reports were considered, see:

(5) Fifth periodic report - CERD/C/167/Add.1 (CERD/C/SR.870-871);
(6) Sixth periodic report - CERD/C/192/Add.1 (CERD/C/SR.870-871).

GE.92-15510/9499a

## Introduction

1. The seventh periodic report of the Republic of Korea is submitted in accordance with article 9 of the International Convention on the Elimination of all Forms of Racial Discrimination (hereinafter referred to as "the Convention").

2. The Committee on the Elimination of Racial Discrimination (hereinafter referred to as "the Committee") is advised to read this report in conjunction with the previous reports submitted by the Government of the Republic of Korea.

3. The present report deals mainly with new developments since the submission of the sixth periodic report (CERD/C/192/Add.1) of 16 July 1990.

4. The information contained in this report is set out in accordance with the revised general guidelines concerning the form and contents of reports by States parties (CERD/C/70/Rev.2).

## PART I. GENERAL

5. As the supreme law of the State, the Constitution of the Republic of Korea, which was adopted upon the desire and consensus of the Korean people, has enormously contributed to the political, economic and social development of the Republic of Korea, and to the protection of human rights of the Korean people.

6. Article 10 of the Constitution provides, "All citizens shall be assured of human worth and dignity and have the right to pursue happiness. It shall be the duty of the State to confirm and guarantee the fundamental and inviolable human rights of individuals". In addition, article 37 (1) of the Constitution guarantees the fundamental human rights in an explicit and comprehensive manner, stating "Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution". In compliance with these provisions of the Constitution, the laws and regulations contain more detailed provisions.

7. Generally, the fundamental human rights protected by the Constitution, with the exception of the rights the enjoyment of which requires Korean nationality as a condition, are equally guaranteed to all foreigners in the Republic of Korea. The Constitution provides that the fundamental human rights may be restricted by law only when necessary "for national security, the maintenance of law and order, or public welfare" (art. 37 (2), para. 1). Concepts such as "national security, the maintenance of law and order, or public welfare" imply limited cases where restrictions on the rights are inevitable in order to resolve conflicts among individuals in the enjoyment of those rights and to guarantee the human rights of each individual to the fullest extent. With regard to restrictions on the fundamental human rights, the Constitution prescribes strict limitations on the exercise of the Government's power, in order to prevent the abuse of power, by providing that "any such restrictions may not infringe upon the essential aspects of the fundamental human rights (art. 37 (2), para. 2).

8. Since article 6 (1) of the Constitution provides that "treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea", the Convention, ratified by the Government of the Republic of Korea with the consent of the National Assembly, became part of domestic law and can be invoked before the courts of the Republic of Korea and be directly enforced by them.

9. Accordingly, additional domestic legislation is considered unnecessary for the purpose of implementing the provisions of the Convention. In fact, no complaint of racial discrimination has been brought before the court or administrative authorities.

10. The Republic of Korea is an ethnically homogeneous country with a population of 43,268,000 as of 1991: the background of homogeneity of the Korean people was fully explained during the consideration of the fifth and sixth periodic reports.

11. As of 31 December 1991, the number of foreign nationals residing in Korea is 51,021.

Foreign nationals residing in Korea

| | |
|---|---|
| Chinese | 23 464 |
| Americans (United States) | 14 922 |
| Japanese | 5 725 |
| Other nationalities | 6 910 |
| Total | 51 021 |

12. Since 1 January 1991, 86 people have been naturalized of whom 74 persons are of Chinese origin.

## PART II. INFORMATION IN RELATION TO ARTICLES 2 TO 7

### Article 2

13. During the period under consideration, no new law with relevance to the Convention has been enacted. It should be underlined that the existing laws and practices are sufficient for a complete implementation of the Convention.

14. As regards the implementation of article 2, it is notable that the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its Optional Protocol entered into force for the Republic of Korea on 10 July 1990.

### Article 3

15. The Republic of Korea, in the firm belief that apartheid constitutes a crime against the conscience and dignity of mankind, reaffirms its support for the efforts of the South African people and the international community to establish, through peaceful means, a united, non-racial and democratic society in South Africa in which all people, irrespective of race, colour, sex or creed, will enjoy the same fundamental human rights.

16. In this regard, the Government of the Republic of Korea welcomes the recent favourable developments in South Africa, which will foster a climate fully conducive to a peaceful settlement of the problems through negotiation. The Korean Government believes that these developments are positive steps toward the elimination of all forms of racial discrimination and the establishment of a united, democratic and non-racial society in South Africa.

17. In November 1991 and January 1992, responding to the ongoing efforts pursued by the South African Government, Korea lifted some of the sanctions against South Africa which had been imposed since 1978. The measures taken to that effect include the following:

(a) Sports and cultural exchanges as well as the establishment of business relations are allowed;

(b) Private enterprises are allowed to set up branches in South Africa;

(c) Investment and other financial activities by corporations with government investment are allowed;

(d) Trade missions and direct air services are allowed.

18. The Korean Government believes that removal of the sanctions will contribute to enhancing the welfare of the black community and also to the regional development of southern Africa.

19. Notwithstanding the above-mentioned measures, Korea has not established diplomatic or consular relations with South Africa. Furthermore, the ban on the trade of oil and military items with South Africa remains in effect, along with the ban on any activities that may help the country develop or manufacture nuclear weapons.

20. The Korean Government, as an expression of its support for and solidarity with the people of South Africa, since 1978 has provided financial assistance to the United Nations trust funds and programmes for southern Africa and is fulfilling its pledge of US$ 1 million pledged in 1987 to the Action for Resisting Invasion, Colonialism and Apartheid Fund. The Republic of Korea fully supports the noble and untiring efforts of the Special Committee against Apartheid and other relevant bodies of the United Nations to achieve the lofty goal of eliminating all forms of racial discrimination and apartheid.

## Article 4

21. As already stated in previous periodic reports, it is understood that the existing constitutional safeguards and domestic legislation are sufficient for a complete implementation of article 4 of the Convention.

22. For further safeguarding the implementation of article 4 and responding to the wish expressed by the Committee during its consideration of the fifth and sixth periodic reports, the Korean Government is in the process of making the declaration under article 14 of the Convention.

## Article 5

23. As stated in paragraph 14 above, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights entered into force for the Republic of Korea on 10 July 1990 and have the same effect as domestic law.

24. The principle of equal protection of the law is observed in all legislative, judicial and administrative acts of the State. Under articles 107(1) and 111(1) of the Constitution, the Constitution Court adjudicates whether a particular law is in violation of the principle of equal protection of the law provided by the Constitution.

25. During 1990-1991, laws and administrative acts which were held unconstitutional by the Constitution Court due to the violation of the equal protection principle are as follows:

(a) Preference of the National Tax in the Basic National Tax Act (89-HUNGA-95 of 3 September 1990);

(b) Preference in the employment of teachers in the Educational Public Official Act (89-HUNMA-89 of 8 October 1990);

(c) Provision relating to the legal clerk examination of the Enforcement Regulation of the Legal Clerk Act (89-HUNMA-178 of 15 October 1990);

(d) Prohibition of local councilmen from having an additional job in the Local Councilmen Election Act and the Local Autonomy Act (90-HUNMA-28 of 11 March 1991);

(e) Deposit Money System in the Local Councilmen Election Act (91-HUNMA-21 of 11 March 1991).

26. The Republic of Korea became a member of the International Labour Organisation on 9 December 1991, following its accession to the United Nations.

27. Trade unions are organized on an enterprise-by-enterprise basis. The total number of trade unions has increased from 2,725 in June 1986 to 7,698 in December 1990, due mainly to the enlarged democratic process under the present Constitution.

28. The system of minimum wage applies to any firm employing more than ten persons. For 1992, the Government set the minimum wage at the equivalent of $290 per month.

## Article 6

29. The Constitution and other relevant laws provide for numerous remedies for an individual who claims an infringement of his fundamental human rights by an act of racial discrimination.

30. Remedies available in case of an infringement of rights by the government agencies are as follows:

(a) Petition: Generally, an individual who claims an infringement of his fundamental rights may obtain remedies by petitioning for the annulment or nullification of the administrative acts, or for dismissal of the responsible officials under article 26 of the Constitution. Matters for which petitions are available are prescribed in article 4 of the Petition Act, and the petitioning method and procedure are prescribed in articles 6 to 8 of the said Act;

(b) Appeals: An individual whose rights or interests have been violated by an illegal or unjust administrative act or by the exercise or non-exercise of government power by administrative agencies may use the administrative appeals procedure to achieve the proper operation of the administration (Administrative Appeals Act, art. 1);

(c) Litigation: Article 107(2) of the Constitution provides that the courts shall adjudicate the constitutionality or legality of administrative acts. The details of the litigation procedure are prescribed in the Administrative Litigation Act;

(d) Review of administrative decrees and regulations: In order to ensure that administrative decrees and regulations do not violate the fundamental rights of the citizens, article 107(2) of the Constitution provides the court with the power to review administrative decrees and regulations. The review may be conducted by the courts when their constitutionality or legality is at issue in a trial. The Supreme Court has the power to make a final review;

(e) Remedies of the Constitution Court: In case of an infringement of fundamental rights by an unconstitutional administrative act, an individual may obtain remedies through a petition to the Constitution Court;

(f) Compensation for damages: An individual whose fundamental human rights have been infringed by the unlawful act of a public official in the course of his official duties may claim compensation for damages from the State under the procedures prescribed by the National Compensation Act (Constitution art. 29(1)).

31. Remedies available in case of an infringement of fundamental human rights by an individual are as follows:

(a) Complaint or accusation: The person claiming an infringement of his fundamental rights by another individual is entitled to seek withdrawal of the illegal act from the criminal investigation authorities, i.e. the prosecutor's office and the police. For example, through a complaint or accusation with respect to an unlawful detention or an infringement of property rights, an individual can initiate an investigation or prosecution of such unlawful acts. In addition to a complaint or an accusation, the law provides for procedures for requesting an adjudication (Code of Criminal Procedure, arts. 260-262);

(b) Civil lawsuit for compensation: An individual who claims an infringement of his fundamental rights by another person can also file a lawsuit to seek compensation for damages;

(c) Remedies available to the victims of a crime: The Constitution provides for State aid to the victims of a crime by stipulating, "Citizens, who have suffered bodily injury or death due to criminal acts of others, may receive aid from the State under the conditions prescribed by law" (art. 30). The State Aid for Victims of Crime Act, promulgated on 1 July 1988, sets forth detailed means and procedures for the payment of State aid.

## Article 7

32. In the area of education, culture and information, the legislations and measures by the Government expressed in the fifth and sixth periodic reports remain valid.

33. The total number of schools for foreigners increased from 55 in 1990 to 58 in 1991; 7,338 students are registered in such schools.

Schools for foreigners in Korea

| | |
|---|---|
| Chinese | 40 |
| Americans (United States) | 13 |
| Japanese | 2 |
| British | 2 |
| Swiss | 1 |
| Total | 58 |

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